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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

P.R.,

Petitioner,

v.

THE SUPERIOR COURT OF IMPERIAL
COUNTY,

Respondent;

IMPERIAL COUNTY DEPARTMENT
OF SOCIAL SERVICES,

Real Party in Interest.

D045385

(Imperial County
Super. Ct. No. 22552)

Proceedings in mandate after reference to a Welfare and Institutions Code section
366.26 hearing. Donal B. Donnelly, Judge. Petition denied.

P.R. (the mother) seeks review of orders terminating her reunification services and setting a section 366.26 hearing.¹ She contends she substantially complied with the requirements of her reunification plan. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

On October 14, 2002, the Imperial County Department of Social Services (the Department) petitioned under section 300, subdivisions (b) and (g) on behalf of five-year-old A.R., four-year-old D.R., two-year-old C.P., and one-year-old M.R., alleging there were unsanitary conditions in the family home and the children had been left without provision for support. The petition alleged the home was infested with cockroaches, trash and dirty clothes were thrown about and there was a foul odor and a dead cat in the yard. The petition further alleged tribal social services went to the home to offer services, but the mother was intoxicated and became hostile and agitated.

The court found a prima facie showing had been made and ordered the children detained in out-of-home care. On November 7, 2002, the mother admitted the allegations regarding an unsanitary home. The court found them true, dismissed the remaining allegations and placed the children with the mother.

The social worker reported the mother's family maintenance plan required her to complete a parenting class, participate in counseling and an outpatient drug and alcohol rehabilitation program, and cooperate with the social worker. The court declared the

¹ All statutory references are to the Welfare and Institutions Code.

children dependents, found the mother had made progress and returned custody to her with family maintenance services.

The social worker reported the mother, M.R. and D.R. are enrolled members of the Quechan Indian Tribe (the Tribe) and the other two children were not yet enrolled. The mother was renting a house from the Tribe and it was providing assistance to her. The social worker reported the mother was trying to keep the house clean and safe for the children and they showed a loving bond toward her and toward each other. The mother was cooperating with the social worker, but had not completed a parenting class, enrolled in a drug and alcohol rehabilitation program or started counseling. At the six-month hearing on May 13, 2003, the court continued family maintenance services.

On July 24 the Department petitioned under section 387 and removed the children from the mother's custody because she had not complied with the family maintenance plan and the children had head lice, had not been fed and were very dirty. On August 12 the first petition was dismissed and the Department filed a second petition, alleging the mother had not complied with the family maintenance plan. The court ordered the children detained. Carlos P., the father of the three younger children (the father), stated he wanted to have all four children live with him in San Antonio, Texas.

The tribal social worker opined the mother was unable to care for the children. A staff member of the Tribal parenting program reported the mother had attended a few parenting classes and she was uncooperative, hostile and used foul language with the children. The parenting program director opined she needed mental health counseling. The mother's drug test showed the presence of methamphetamine.

On October 14 the court sustained the petition. The mother's reunification plan included drug and alcohol treatment, random drug tests, counseling, and for her to maintain an adequate home and cooperate with the social worker. At the dispositional hearing on November 10, 2003, the court removed the children from the mother's custody and ordered reunification services.

On March 15, 2004, the social worker reported the mother was attending a substance abuse program, had completed one parenting class, was enrolled in a second one and was keeping her house in good order. The mother said she was in a job training program and seeking employment. She had not started counseling or drug testing, but was sober during visits. At the six-month hearing the court continued the children as dependents and ordered continued reunification services and a psychological evaluation for the mother.

On June 14 the social worker said the Tribe reported there were no Indian homes available where all of the children could be placed together. The social worker said she had not talked with the mother for several weeks and had no telephone number where she could reach her. The mother had missed parenting classes, was not drug testing and had not visited the children since mid-April. On June 21 the court ordered the father's home be evaluated for placement. On September 7 the father petitioned under section 388 seeking placement of the children.

The social worker reported the mother had gone to an outpatient drug and alcohol program for one year, but was no longer attending. She was not drug testing. She resisted starting a counseling program, saying she would deal with her problems on her

own before talking with anyone about them. She visited the children fairly regularly and was sober during visits. The children were having weekly telephone contact with the father.

At the twelve-month review hearing on October 25 it was reported that a Tribal representative had gone to the mother's residence to bring her to court, but the mother did not come out of the house. The mother's attorney stated he had not had recent contact with her. The court found reasonable services had been offered or provided, the mother had failed to participate regularly or make progress with the components of her case plan, and returning the children to her care would create a substantial risk of detriment. The court terminated reunification services for the mother and set a section 366.26 hearing.

The mother petitions for review of the court's orders. (§ 366.26, subd. (l); Cal. Rules of Court, rule 38.1.) This court issued an order to show cause, the Department responded and the parties waived oral argument.

DISCUSSION

The mother contends she substantially complied with the family reunification plan. She argues that two days after the hearing she appeared at the Public Defender's office with certificates showing she had completed various aspects of her plan and indicating she participated regularly and made substantial progress in court-ordered treatment programs.

The Department argues the mother has waived her argument because she did not make the argument or present any evidence in the juvenile court. It also argues because she did not present the documents she has attached to her writ petition in juvenile court,

her argument is not cognizable or ripe for this court's review. We agree the mother has waived the argument by failing to make it in juvenile court and she may not present her documentation for the first time in this court. We also hold that even had the mother preserved the issue for review, substantial evidence supports the court's findings and orders.

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.'" (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114, quoting *In re Biggs* (1971) 17 Cal.App.3d 337, 340.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

The social worker's reports showed the mother had not completed her reunification plan. She was not drug testing as required and although she attended a drug and alcohol rehabilitation program for one year, she did not show she had completed the program. She was not cooperating with the social worker and, in fact, refused to allow the social worker to go into her home to see if it was safe and adequate for the children. Also, she did not start a counseling program or have a psychological evaluation.

"Reunification services are voluntary, and cannot be forced on an unwilling or indifferent parent." (*In re Jonathan R.* (1989) 211 Cal.App.3d. 1214, 1220.) A parent's problems do not excuse him or her from participation in a reunification plan. "[S]ome

capacity to achieve the reunification goals is presumed." (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) A parent's failure to participate regularly in a court-ordered treatment program is prima facie evidence that returning a child to the parent's care would be detrimental. (§ 366.21, subds. (e) and (f).) Even considering the documents presented to this court the mother has not shown regular compliance with her court ordered treatment program.

DISPOSITION

The petition is denied.

O'ROURKE, J.

WE CONCUR:

HUFFMAN, Acting P. J.

McDONALD, J.